

STATEMENT OF CONSIDERATION RELATING TO
907 KAR 10:016

Department for Medicaid Services
Amended After Comments

(1) A public hearing regarding 907 KAR 10:016 was not requested and; therefore, not held.

(2) The following individuals submitted written comments regarding 907 KAR 10:016:

<u>Name and Title</u>	<u>Organization/Agency/Other Entity</u>
Anne Marie Regan, Attorney at Law	Kentucky Equal Justice Center
Sharon D. Perkins, Director of Health Policy	Kentucky Hospital Association
Kristi Hall, President,	Kentucky Academy of Physician Assistants

(3) The following individual from the promulgating agency responded to comments received regarding 907 KAR 10:014:

<u>Name and Title</u>	<u>Organization/Agency/Other Entity</u>
Leslie Hoffmann, Director	Department for Medicaid Services, Division of Community Alternatives
Ann Hollen, Program Manager	Department for Medicaid Services, Division of Community Alternatives
Jonathan MacDonald, Policy Analyst	Department for Medicaid Services, Commissioner's Office
Stuart Owen, Regulation Coordinator	Department for Medicaid Services, Commissioner's Office

SUMMARY OF COMMENTS AND AGENCY'S RESPONSES

(1) Subject: Fees and Rates

(a) Comment: Anne Marie Regan, Attorney at Law, Kentucky Equal Justice Center, stated the following:

"Section 3(3) of the proposed regulation limits the duration of inpatient psychiatric hospitalization to the birth month in which an individual turns 21. This is a change from Section 2 of the current version of the regulation, which allows coverage up to age 22 if treatment began prior to the individual's 21st birthday."

(b) Response: The Department for Medicaid Services (DMS) is correcting the mistake via an “amended after comments” administrative regulation as follows:

“(3) If a recipient is receiving inpatient psychiatric hospital services on the recipient’s twenty-first (21st) birthday, the Medicaid Program shall continue to cover the recipient’s admission:

(a) As long as the services continue to be medically necessary for the recipient; and

(b) Through the birth month in which the child becomes twenty-two (22)~~twenty-one (21)~~ years of age.”

(2) Subject: Court ordered treatment

(a) Comment: Sharon D. Perkins, Director of Health Policy, Kentucky Hospital Association, stated the following:

“Section 6. (3) the Medicaid program shall not reimburse for a court-ordered psychiatric hospital admission unless the department determines that the admission meets the criteria established in Section 3(1) of this administrative regulation. If the court system orders a person for treatment into a psychiatric facility and the person has Medicaid, then Medicaid should be responsible for payment. If the court deems a person in such a dire situation then the person should meet medical necessity and receive treatment and the facility should be reimbursed for the treatment. Why should psychiatric hospitals bear the cost associated with treatment if the person has Medicaid? Persons court ordered into a psychiatric facility are not going to be able to afford the necessary care and will not be able to find this treatment in Kentucky, which will make the patient unable to comply with the court order. Refusal of the Department or MCOs to pay for court ordered treatment flies in the face of expanding access to behavioral health treatment. For these reasons this language should be deleted to assure court ordered treatment is reimbursed.

(b) Response: A federal Medicaid requirement is that federal Medicaid dollars are only available for medically necessary services/items. As a judge is not viewed as a clinical expert a judge’s decree that an individual should receive services is not viewed as a valid determination of medical necessity. As no federal funding is provided for court-ordered services the Department for Medicaid Services historically has not covered such services and does not intend to do so nor does it require managed care organizations to cover such services.

(3) Subject: Reimbursement for Substance Abuse

(a) Comment: Sharon D. Perkins, Director of Health Policy, Kentucky Hospital Association, stated the following:

“Additionally, under Section 6. (4) The Medicaid Program shall not reimburse for: (b) an admission for substance use treatment. Medicaid expanded the scope of service to include chemical dependency (CD) treatment if the person has a dual diagnosis. The

language needs to reflect the new CD services that are now provide; therefore this exclusion should be deleted as psychiatric hospitals can and do treat people with substance abuse.”

(b) Response: DMS does not want to change the scope of psychiatric hospital care to include substance use treatment at this time but will continue to analyze the recommendation.

(4) Subject: Changes to the age limits coincide with the regulations recently issued by CMS

(a) Comment: Sharon D. Perkins, Director of Health Policy, Kentucky Hospital Association, stated the following:

“KHA also requests changes to the age limits coincide with the regulations recently issued by CMS. The Medicaid Managed Care Proposed rule states, “We propose to add a new paragraph (u) to permit MCOs and PIHPs to receive a capitation payment from the state for an enrollee aged 21 to 64 that spends a portion of the month for which the capitation is made as a patient in an institution for mental disease (IMD) so long as the facility is a hospital providing psychiatric or substance use disorder (SUD) inpatient care or sub-acute facility providing psychiatric or SUD crisis residential services and the stay in the IMD is for less than 15 days in that month.” This could be a significant change to expanded access and we ask that you consider adding language to permit psychiatric hospital to serve age 21-64 if and to the extent permitted by CMS. By adding this language, Kentucky hospitals would be able to begin serving this population when CMS finalizes their rule without having a delay in have to amend this regulation.”

(b) Response: DMS appreciates the input and is monitoring the promulgation of the CMS rule but notes that it is a proposed rule and far from being finalized. It is currently open to public comments through July 27. DMS anticipates that CMS will revise the rule in response to public comments and later issue a final rule or possibly and interim rule followed later by a final rule. DMS is monitoring the rule’s development but isn’t taking any action at this preliminary stage of the process.

(5) Subject: Resident Crisis Stabilization as a covered service

(a) Comment: Sharon D. Perkins, Director of Health Policy, Kentucky Hospital Association, stated the following:

“This regulation does not provide a provision for residential Crisis Stabilization as a covered service. According to the newly passed Heroin Bill, SB 192, crisis stabilization may be provided by a hospital on hospital grounds. This is a logical component in the continuum of care provided by psychiatric hospitals, as all levels of care are provided by the hospitals. KHA strongly encourages the Cabinet to include language to specifically allow coverage of crisis stabilization provided by psychiatric hospitals.”

(b) Response: The Department for Medicaid Services addresses residential crisis stabilization unit (RCSU) services and reimbursement in separate administrative regulations – 907 KAR 15:070, Coverage provisions and requirements regarding residential crisis stabilization unit services, and 907 KAR 15:075, Reimbursement provisions and requirements regarding residential crisis stabilization unit services. 907 KAR 15:070 and 907 KAR 15:075 are not currently being revised.

(6) Subject: PA's providing service in inpatient psychiatric hospitals

(a) Comment: Kristi Hall, President, Kentucky Academy of Physician Assistants stated the following:

"In 907 KAR 10:016, regarding inpatient psychiatric hospital services, the rule indicates that physicians certify medical necessity of admission to, or continued stay in, a psychiatric hospital, as well as establish and approve plans of care. There is no mention of a PA's ability to perform these tasks. Meanwhile, a definition of 'professional staff' is provided that, due to its ambiguity, we are concerned may leave PA inclusion up to individual interpretation."

(b) Response: Via an "amended after comments" administrative regulation DMS is revising the definition of "professional staff" to include physician assistants.

SUMMARY OF STATEMENT OF CONSIDERATION
AND
ACTION TAKEN BY PROMULGATING ADMINISTRATIVE BODY

The Department for Medicaid Services (DMS) has considered the comments received regarding 907 KAR 10:016 and is amending the administrative regulation as follows:

Page 3
Section 1(10)
Line 4

After "physicians," , insert "physician assistants,".

Page 6
Section 3(3)(b)
Line 21

After "becomes", insert "twenty-two (22)".
Delete "twenty-one (21)".